

Department of Veterans Affairs

§ 21.7642

for delivery to the reservist upon registration. The educational institution shall not deliver the advance payment check to the reservist more than 30 days in advance of the commencement of his or her program. If delivery is not made within 30 days after the commencement of the program, the educational institution shall return the check to VA.

(5) The advance payment shall be in an amount not to exceed the educational assistance due for the month or fraction thereof in which the course will begin plus the educational assistance for the following month.

(6) VA will authorize advance payment only at the beginning—

- (i) Of an ordinary school year, or
- (ii) Of any other enrollment period which begins after a break of 30 days or more, provided the reservist is not eligible for payment for the break.

(Authority: 10 U.S.C. 1613(b), 38 U.S.C. 3680(d); Pub. L. 98-525)

(e) *Frequency of payment.* Except as provided in paragraph (d) of this section, VA shall pay educational assistance in the month following the month for which training occurs. VA may withhold payment to a reservist who is enrolled in a course not leading to a standard college degree for any month until the reservist's attendance has been reported for that month. VA may withhold final payment in all cases until it both receives certification that the reservist pursued his or her course, and makes any necessary adjustments.

(Authority: 10 U.S.C. 1613(b), 38 U.S.C. 3680(g); Pub. L. 98-525)

(f) *Apportionments prohibited.* VA will not apportion educational assistance.

(Authority: 10 U.S.C. 1613(b), 38 U.S.C. 3680; Pub. L. 98-525)

(Approved by Office of Management and Budget under control number 2900-0073)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 61 FR 29306, June 10, 1996; 61 FR 29482, June 11, 1996]

§ 21.7642 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* A reservist is barred from receiving educational assistance concurrently under 10 U.S.C.

Chapter 1606 and any of the following provisions of law—

- (1) 38 U.S.C. ch. 30;
- (2) 38 U.S.C. ch. 31;
- (3) 38 U.S.C. ch. 32;
- (4) 38 U.S.C. ch. 34;
- (5) 38 U.S.C. ch. 35;
- (6) 10 U.S.C. ch. 107;
- (7) Section 903 of the Department of Defense Authorization Act, 1981;
- (8) The Hostage Relief Act of 1980; or
- (9) The Omnibus Diplomatic Security Act of 1986.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3695; sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; secs. 642(c), (d), Pub. L. 101-189, 103 Stat. 1457-1458)

(b) *Election of benefits.* When paragraph (a) of this section applies, the reservist must elect in writing which benefit he or she wishes to receive. The reservist may make a new election at any time, but may not elect more than once in any calendar month.

(Authority: 10 U.S.C. 1613(b), 38 U.S.C. 3695; Pub. L. 98-525)

(c) *Senior Reserve Officers' Training Corps scholarship program.* Educational assistance may not be provided to a reservist receiving financial assistance under 10 U.S.C. 2107 as a member of the Senior Reserve Officers' Training Corps scholarship program.

(Authority: 10 U.S.C. 16134; Pub. L. 98-525)

(d) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist—

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty;

(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or

(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 10 U.S.C. 1613(b), 38 U.S.C. 3681; Pub. L. 98-525)

(e) *Service Members Occupational Conversion and Training Act of 1992.* A reservist may not receive educational assistance under the Montgomery GI Bill—Selected Reserve program during the period for which benefits are payable under the Service Members Occupational Conversion and Training Act of 1992.

(Authority: Sec. 4492(a), Pub. L. 102-484, 106 Stat. 2765-2766)

[53 FR 34740, Sept. 8, 1988, as amended at 56 FR 9628, Mar. 7, 1991; 61 FR 20729, May 8, 1996; 61 FR 29307, June 10, 1996]

§ 21.7644 Overpayments.

(a) *Prevention of overpayments.* In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of §§ 21.4008 and 21.4009 of this part in the same manner as they are applied in the administration of 38 U.S.C. chapters 34 and 36. See § 21.7633.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690(b); Pub. L. 98-525)

(b) *Penalties are not overpayments.* The Secretary concerned may require a refund from an individual who fails to participate satisfactorily in required training as a member of the Selected Reserve. This refund is subject to waiver by the Secretary. However, this refund—

(1) Is not an overpayment for VA purposes, and

(2) Is not subject to waiver by VA under § 1.957 of this chapter.

(Authority: 10 U.S.C. 16135; Pub. L. 98-525)

(c) *Liability for overpayments.* (1) The amount of the overpayment of educational assistance paid to a reservist constitutes a liability of that reservist unless—

(i) The overpayment is waived as provided in § 1.957 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See § 21.7635(o) of this part.

(2) The amount of the overpayment of educational assistance paid to a reservist constitutes as liability of the educational institution if VA determines that the overpayment was made as the result of—

(i) Willful or negligent false certification by the educational institution, or

(ii) Willful or negligent failure to certify excessive absences from a course, or discontinuance or interruption of a course by the reservist.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3685; Pub. L. 98-525)

(d) *Waiver of recovery of overpayments.*

(1) Except as stated in paragraph (b) of this section in determining whether an overpayment should be waived or recovered from a reservist, VA will apply the provisions of § 1.957 of this chapter.

(2) In determining whether an overpayment should be recovered from an educational institution, VA will apply the provisions of § 21.4009(a)(2), (3), (4), and (5), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this part to overpayments of educational assistance under 10 U.S.C. chapter 1606 in the same manner as they are applied to overpayments of educational assistance allowance under 38 U.S.C. chapters 34 and 36.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3685, 5302; Pub. L. 98-525)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996]

CROSS-REFERENCE: Entitlement charges. See § 21.7576(c) of this part offering training to veterans and servicemembers under 38 U.S.C. ch. 34.

PURSUIT OF COURSE AND REQUIRED REPORTS

§ 21.7650 Pursuit.

The reservist is entitled to educational assistance only for actual pursuit of a program of educational. Verification is accomplished by various certifications.

(Authority: 10 U.S.C. 16131(a); Pub. L. 98-525)

§ 21.7652 Certification of enrollment and verification of pursuit.

As stated in § 21.7640 of this part, the educational institution must certify the reservist's enrollment before he or she may receive educational assistance. Nothing in this section or in any section in Part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.